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LeMond Cycling, Inc.,)	File No. 08 CV 1010
)	(RHK/JSM)
Plaintiff,)	
)	
vs.)	Saint Paul, Minnesota
)	January 15, 2009
Trek Bicycle Corporation,)	1:00 p.m.
)	
Defendant/Third-Party)	
Plaintiff,)	
)	
vs.)	
)	
Greg LeMond,)	
)	
Third-Party Defendant.)	

APPEARANCES

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5 Proceedings recorded by mechanical stenography;
6 transcript produced by computer.
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1 P R O C E E D I N G S

2 IN OPEN COURT

3
4 THE COURT: Good afternoon. We're here this
5 afternoon in connection with the matter of LeMond Cycling
6 versus Trek Bicycle Corporation, et al, court file number
7 08-1010. If the attorneys would identify themselves
8 starting first with counsel for Plaintiffs.

9 MS. RAHNE: Thank you, your Honor. My name is
10 Denise Rahne from Robbins Kaplan. I represent LeMond
11 Cycling and Greg LeMond, and I have with me from my office
12 Jennifer Robbins.

13 THE COURT: I'm sorry, Jennifer?

14 MS. RAHNE: Robbins.

15 THE COURT: And on behalf of Defendants and
16 Third-Party Plaintiff?

17 MR. WEBER: Good afternoon, your Honor. Ralph
18 Weber and Erik Salveson for Trek.

19 THE COURT: It's Ralph and can you spell your last
20 name, please?

21 MR. WEBER: W-E-B-E-R.

22 THE COURT: All right. And I'm sorry.
23 Mr. Seltzer?

24 MR. SALVESON: Salveson, S-A-L-V-E-S-O-N.

25 THE COURT: All right. We're here this afternoon

1 to address three motions filed in this case. Docket number
2 49 is Plaintiff's Motion to Compel Discovery. Docket 55 is
3 Defendant's Motion to Compel a Rule 37 Conference. And
4 docket 61, which is Plaintiff's Motion to Compel Responses
5 to Written Discovery.

6 Before we begin with these motions, let me say I
7 am going to grant the motion to -- Defendant's Motion to
8 Compel the Rule 37 Conference, and in fact I'm going to
9 require that the parties have their Meet and Confer right
10 now. So having reviewed the papers and reviewed the history
11 leading up to these motions, I am not satisfied that the
12 parties have engaged in a proper Meet and Confer to try and
13 resolve their various disputes so you're going to do it
14 right now.

15 We're going to go off the record. I'm going to
16 leave the courtroom here, as is the court reporter, and I'm
17 going to require you to meet and confer on all of the issues
18 that are the subject of your respective motions. And when
19 you're done meeting, either you have reached agreement on
20 all, some or none, then you can notify me and I will come
21 back in with the court reporter and we will put on the
22 record what you've agreed to, if anything; what remains to
23 be resolved, and I'll hear argument on those issues that
24 need to be resolved.

25 So with that said, we're going to go off the

1 record here and as soon as you all are ready to have me
2 return into the courtroom here I'll return. Okay?

3 MS. RAHNE: Thank you, your Honor.

4 MR. WEBER: Thanks, Judge.

5 THE COURT: Okay. Thank you very much.

6 (Recess taken from 1:04 to 2:30 p.m.)

7 THE COURT: Let me before we go on the record, let
8 me -- all right. We're back here on the record in the
9 matter of LeMond Cycling, et al versus Trek Bicycle
10 Corporation. The parties have had a Meet and Confer on both
11 of their respective Motions to Compel at the requirement of
12 the Court. So let's do this. Let's first address
13 Plaintiff's Motion to Compel. And if Plaintiff's counsel
14 would come up to the podium and tell me what the status of
15 the resolution of that motion is; that is, what issues have
16 been resolved and what issues, if any, remain to be
17 resolved. And then I'll hear argument on those motions and
18 then we'll do the same with Defendant's motion.

19 MS. RAHNE: I'm happy to, your Honor.

20 THE COURT: All right.

21 MS. RAHNE: Thank you, your Honor. I think we had
22 a very productive discussion and we have been able to
23 resolve the set of issues related to Trek's production of
24 documents relating to their efforts to promote the LeMond
25 brand.

1 THE COURT: Let's go through each interrogatory
2 and document request that is the subject of your motion and
3 you can tell me whether it's resolved or whether it needs
4 resolution.

5 MS. RAHNE: Okay. This would address request for
6 production number 3.

7 THE COURT: So document request number 3 is
8 resolved?

9 MS. RAHNE: Correct. Request for production
10 number 11.

11 THE COURT: Yes.

12 MS. RAHNE: And request for production number 16.

13 THE COURT: Are all resolved?

14 MS. RAHNE: Are all resolved.

15 THE COURT: All right. And does that mean that
16 interrogatory number 8 and document 23, along with document
17 request number 24 and the privilege logs and redaction logs
18 are not resolved?

19 MS. RAHNE: Interrogatory number 8 and document
20 requests 23 and 24 are not resolved. We do have an
21 agreement regarding the privilege and redaction logs.

22 THE COURT: Okay. So that is resolved as well.

23 As to the items that are resolved, is it your
24 desire to put the resolution on the record or are you
25 satisfied that each of you know what the resolution is and

1 I'll simply reflect that the parties have reported that they
2 have resolved those particular discovery requests?

3 MS. RAHNE: I would like to put something briefly
4 on the record with respect to the results of the issues
5 broadly if I may.

6 THE COURT: All right. Let's then -- why don't
7 you put on the record then what the resolution is as to
8 document request 3, 11, 16, and the privilege and redaction
9 logs, and then we'll hear about the remaining discovery
10 items.

11 MS. RAHNE: Thank you, your Honor. With regard to
12 request for production 3, 11 and 16, Trek has agreed to our
13 satisfaction to provide all documents and then confirm that
14 they have done so in sufficient time -- and I don't have the
15 date here. I feel comfortable without putting that on the
16 record, but within sufficient time for us to get the
17 information to our experts so that we can assess initial
18 discovery that we need to take and have our experts begin
19 their work.

20 THE COURT: All right. And then on the privilege
21 log?

22 MS. RAHNE: On the privilege and redaction log,
23 your Honor, we have an agreement that we will help Trek
24 prioritize which ones they will look at additionally. And
25 that for those that we identify, they will provide

1 additional subject matter information so that we can better
2 assess the privilege and whether we are in a position to
3 make any challenges.

4 THE COURT: So you're going to give them a list of
5 which ones that you need greater description and they are
6 going to give you a better description as to those. And
7 then you will be able to decide whether down the road to
8 move on those?

9 MS. RAHNE: That's correct, your Honor.

10 THE COURT: Okay. I'm just making a note here.

11 All right. Then does that describe the resolution
12 of those issues?

13 MS. RAHNE: Yes, it does, your Honor.

14 THE COURT: All right. Then why don't you go
15 ahead and make argument with respect to the remaining
16 discovery issues.

17 MS. RAHNE: Thank you, your Honor. Your Honor,
18 I've been -- over the last 24 hours when I have been getting
19 ready for this, I have been struggling to reconcile Trek's
20 position with regard to the discovery we're seeking as to
21 Trek's business relationship with Mr. Armstrong with its own
22 request and what it's asking of LeMond Cycling. I think
23 we're speaking in broad terms with both motions, and I
24 obviously won't address Mr. Weber's motion right now, but
25 some reasonable amounts of discovery that seeks admissible

1 information related to the parties' contract, the
2 performance of the contract, and motives with regard to that
3 exact issue.

4 THE COURT: I'm sorry. The parties' contract
5 meaning?

6 MS. RAHNE: The contract between LeMond Cycling
7 and Trek.

8 THE COURT: All right.

9 MS. RAHNE: There's a fairly well-founded record
10 and we've tried not to overwhelm the Court with the entire
11 back story on all of the major players in this dispute. But
12 there's a fairly well-established record and we've tried to
13 give a flavor of it in terms of the relationship and the
14 entanglements between Trek, Mr. Armstrong and LeMond
15 Cycling. Mr. Armstrong has inserted himself as early as
16 2001 and Trek has repeatedly claimed its business
17 relationship with Mr. Armstrong as a basis for restricting
18 or attempting to restrict Mr. LeMond's conduct in some
19 instances and restricting it in others and making claims as
20 to what was appropriate and not appropriate under the
21 contract.

22 THE COURT: Under the contract between it and
23 Mr. LeMond?

24 MS. RAHNE: Correct, your Honor.

25 THE COURT: All right.

1 MS. RAHNE: They have claimed at times that
2 Mr. Armstrong is a business asset and I think we've provided
3 the Court with an illustration of that. I think in an
4 effort to avoid providing the information related to its
5 agreement with Mr. Armstrong, they have now moved away from
6 saying that they are claiming any damage relating to him.

7 That, first off, we find that an interesting
8 shift. Secondly, it doesn't negate the fact that we're
9 entitled to discovery as to Trek's motives for its treatment
10 of the LeMond brand in light of Mr. Armstrong's involvement.

11 THE COURT: All right. So you're saying it still
12 bears on liability?

13 MS. RAHNE: Absolutely, your Honor.

14 THE COURT: And that would address interrogatory
15 number 8 and document request number 3 where you were
16 seeking to have them to identify any contractual
17 relationships or agreements with Mr. Armstrong and to
18 produce them?

19 MS. RAHNE: That's correct, your Honor. I think
20 it's actually request for production number 23.

21 THE COURT: All right. And then I have down that
22 interrogatory 8 asks them to describe the agreements; is
23 that right?

24 MS. RAHNE: That's correct, your Honor.

25 THE COURT: And then document request number 4,

1 24, I'm reading my notes here, sought documents showing any
2 telephone conferences made to or from Mr. Armstrong
3 regarding Trek including calls from Mr. Burke on August 13,
4 2001.

5 MS. RAHNE: Yeah. And I should correct the
6 record, I think, on that. Mr. Weber probably would when he
7 had a chance anyway, but it's our understanding from our
8 Meet and Confer actually that we could call this one
9 resolved because Trek is claiming that they have produced
10 everything they have. I mean, obviously we reserve our
11 right to explore that, but we are taking them on their word
12 at that.

13 THE COURT: So that's resolved as well so we're
14 really down to interrogatory 8 and 23?

15 MS. RAHNE: That's correct, your Honor.

16 THE COURT: Anything further that you wish to say
17 regarding your motion then?

18 MS. RAHNE: No, your Honor.

19 THE COURT: All right. Then I'll hear the
20 response by Trek.

21 MR. WEBER: Thank you, Judge.

22 THE COURT: Thank you.

23 MR. WEBER: As to the Armstrong contracts --

24 THE COURT: First of all, before you get into
25 interrogatory 8 and 23, has counsel for Plaintiffs

1 accurately described the resolution of their motion with
2 respect to interrogatory -- I'm sorry, document requests 3,
3 11, 16, 24, and the privilege and redaction logs?

4 MR. WEBER: I believe she has, yes.

5 THE COURT: Then I'll go ahead and hear your
6 responses to interrogatory 8 and document request 23.

7 MR. WEBER: Thanks, Judge. It's important on the
8 Armstrong issue to distinguish between what Trek is
9 producing and what Trek is asking not to have to produce.
10 What Trek has produced are any documents reflecting
11 interchanges, discussions, communications, with
12 Mr. Armstrong concerning Mr. LeMond. And there were
13 discussions back in 2001 when Mr. LeMond suggested
14 Mr. Armstrong was a fraud and Mr. Armstrong was very upset
15 about that and contacted Trek. And Trek in turn, Mr. Burke,
16 contacted Greg LeMond and what came out of it was a press
17 release. So there's no secret that that happened. And some
18 materials that relate to that, those communications, have
19 been identified and produced, including Mr. Burke's
20 handwritten notes of various conversations, including
21 conversations with Mr. LeMond on that topic back in 2001.

22 What Trek is asking not to turn over are separate
23 contractual agreements with Mr. Armstrong as a spokesperson,
24 as a sponsored athlete of Trek, because those agreements and
25 those contracts between Trek and Mr. Armstrong are not

1 implicated in this dispute. The point of Trek's damage
2 claim is that Mr. LeMond's, as you've seen in the papers,
3 comments were very damaging to his own brand and his line of
4 bikes. And as a result --

5 THE COURT: Go ahead.

6 MR. WEBER: As a result, Trek sold a lot fewer
7 LeMond brand of bicycles than they otherwise would have.

8 So Plaintiffs in seeking materials suggest that
9 they were entitled to the Armstrong contracts on the grounds
10 that it related to Trek's damages, and our point of
11 clarification response is that it does not.

12 THE COURT: I want to find -- just hang on a
13 moment here. I understand from your responsive papers that
14 you say that Plaintiffs are not seeking any -- Trek is not
15 seeking any damages with respect to what impact, if any,
16 Mr. LeMond's alleged comments had on its business with
17 Mr. Armstrong. It's not -- to the extent, for example, it
18 may have affected the sale of bikes with Mr. Armstrong's
19 name on it or other products with Mr. Armstrong's name on
20 it. But when I read your answer and counterclaim, it seems
21 to me that throughout it it seems to imply or suggest that
22 Mr. LeMond's alleged comments impacted the Trek brands, of
23 which Mr. Armstrong's products, to the extent his name is on
24 those brands as well, would suggest to me are implicated as
25 well. So if you could address that.

1 MR. WEBER: Mr. Armstrong doesn't have his name
2 on -- there is not an Armstrong line of bicycles.

3 THE COURT: Is there an Armstrong line of any
4 products that are sold by Trek?

5 MR. WEBER: Not to my knowledge, no.

6 THE COURT: So to the extent that Mr. Armstrong
7 has a relationship with Trek, what does it have to do with?

8 MR. WEBER: It enhances and promotes the Trek
9 brand.

10 THE COURT: Okay.

11 MR. WEBER: And there were indeed customer
12 comments that said things like, As long as Trek is
13 associated with LeMond, we won't have anything to do with
14 Trek at all. Not just the LeMond brand of bikes.

15 But we are not attempting to quantify and seek
16 damages for damage that -- lost sales of Trek brand of
17 bikes. Our damage claim relates to the reduction in sales
18 of LeMond branded bikes.

19 What happened during this period was road bike
20 sales after 1999 went up at a precipitous rate associated
21 with the public attention for road cycling that occurred in
22 that time period, particularly associated with
23 Mr. Armstrong's success in the Tour de France. So you have
24 roadside sales going like this. The LeMond sales went at a
25 much lower trajectory. And what we expect to prove to the

1 jury is had Mr. LeMond not damaged his brand, his bike line
2 would have followed the industry road bike increases but did
3 not because of the negative consumer and dealer reactions
4 that Mr. LeMond's comments generated.

5 THE COURT: All right. So your view is that
6 whatever the contractual relationship is, it has no bearing
7 on damages and it has no bearing on liability?

8 MR. WEBER: Right. It would be things, what are
9 the terms of the compensation that Mr. Armstrong is to
10 receive as being a Trek-sponsored athlete. What are his
11 obligations in turn to Trek under that agreement. It's a
12 spokesperson sponsored-athlete agreement with the terms and
13 conditions accordingly; and we don't see any interplay
14 between those terms and conditions and the issues that would
15 be before the jury.

16 THE COURT: All right.

17 MR. WEBER: To the contrary, as I've said at the
18 outset, to the extent that Mr. Armstrong said things to Trek
19 about Mr. LeMond, I think those are fair game and we have
20 turned them over.

21 THE COURT: All right. Okay. Anything further on
22 interrogatory number 8 and document request number 23?

23 MR. WEBER: I don't think so.

24 THE COURT: All right.

25 MR. WEBER: And as to the -- let me respond to one

1 other comment made. She's trying to inject motive into a
2 contract action. And I think the question for the jury
3 would be did the parties perform or not. And motive is the
4 stuff of torts, not contracts.

5 THE COURT: I'm sorry, motive is?

6 MR. WEBER: The stuff of torts, not contracts.
7 You either performed or you did not perform. And here we
8 have competing breach of contract actions and I think the
9 jury will be asked to assess did LeMond perform on its part;
10 did Trek perform on its part.

11 THE COURT: All right.

12 MR. WEBER: Thank you.

13 THE COURT: Anything further on behalf of the
14 Plaintiffs on this part of the motion?

15 MS. RAHNE: Not at this time, your Honor.

16 THE COURT: All right. Then let's go ahead and
17 hear -- I'll come back to Mr. LeMond's motion in a moment
18 but I do want to hear Trek's Motion to Compel, so whoever
19 will be arguing on behalf of Trek.

20 MR. WEBER: Do you want to hear the points of
21 resolution first?

22 THE COURT: Yes, I do. Same protocol. If you
23 could share with me what's resolved and what's left to
24 resolve.

25 MR. WEBER: Sure.

1 THE REPORTER: I'm having trouble hearing you.

2 THE COURT: Do we have -- the let's see if I can
3 increase the volume.

4 MR. WEBER: I'll try to speak louder. It's that
5 midwestern understated approach. Sorry.

6 All right. Interrogatory 2, 3 -- 2 and 3 are
7 resolved insofar as Plaintiff has agreed to provide
8 additional information or confirm they have given all the
9 information with respect to businesses and employees and
10 agents thereof that they identify as cycling-related
11 businesses. We have a point of disagreement for the Court
12 on our efforts to inquire into Mr. LeMond's business
13 activities outside of areas that they define as cycling
14 related.

15 THE COURT: So in fact interrogatories 2 and 3 are
16 not yet resolved; is that right?

17 MR. WEBER: Resolved in part. And I'm sorry. I
18 skipped over. So it's 1 and 2. There is a remaining issue
19 as to the scope of business interests that they need to
20 identify. 1, 2 and 3.

21 THE COURT: So in other words to the extent that
22 you sought information having to do with bicycling-related
23 interests, you have resolved that?

24 MR. WEBER: Correct.

25 THE COURT: But to the extent you're seeking

1 information about any business entities owned by LeMond or
2 Greg LeMond, those aren't yet resolved?

3 MR. WEBER: Correct.

4 THE COURT: All right. And that's 1, 2 and 3?

5 MR. WEBER: Yes.

6 THE COURT: All right. And now we're onto
7 interrogatory number 4.

8 MR. WEBER: Number 4 relates to taping.

9 THE COURT: Yes.

10 MR. WEBER: And they have agreed to answer the
11 interrogatory. Identify everyone that Mr. LeMond taped and
12 what the current status is of those tapes.

13 THE COURT: So that's resolved?

14 MR. WEBER: That's resolved.

15 THE COURT: In its entirety?

16 MR. WEBER: There is an issue that we're going to
17 work on later as to whether a particular tape that has been
18 withheld is going to be turned over. But that's not going
19 to be raised --

20 THE COURT: That's the issue relating to whether
21 the assertion of work product was appropriate or not?

22 MR. WEBER: Exactly.

23 THE COURT: Okay. Interrogatory number 5.

24 MR. WEBER: Resolved and unresolved. I'm sorry.
25 I think resolved. You're going to confirm that all lawsuits

1 and arbitrations have been --

2 MS. RAHNE: With our understanding about not
3 interested in product liability lawsuits.

4 MR. WEBER: Right. Exactly. There are some
5 product liability lawsuits that Mr. LeMond was named as a
6 Defendant nominally, I suppose, and we're not interested in
7 those.

8 THE COURT: So interrogatory number 5 is resolved?

9 MR. WEBER: Yes.

10 THE COURT: So as I understand it -- if I'm taking
11 you out of order it's the way I organized it based on your
12 presentation -- document request 15 sought all documents
13 related to any lawsuits and arbitrations that he was
14 involved in. Has that been resolved?

15 MR. WEBER: It has.

16 THE COURT: So document request 15 has also been
17 resolved?

18 MR. WEBER: Yes.

19 THE COURT: Okay.

20 MR. WEBER: Number 6 and 7 have been resolved.
21 They have agreed to supplement the information response to
22 that.

23 THE COURT: Okay.

24 MR. WEBER: Number 8, Internet service providers,
25 they have agreed to supplement and produce that information.

1 THE COURT: So that's resolved. All right.

2 MR. WEBER: Number 9, they have agreed to
3 supplement by identifying --

4 THE COURT: Hang on just a second. This is
5 interrogatory number 9?

6 MR. WEBER: Yes.

7 THE COURT: I must have missed it in my notes.

8 MR. WEBER: Page 16 of our brief.

9 THE COURT: Let me grab that then.

10 MR. WEBER: It just asks them to identify and
11 preserve all documents; and if there are any documents that
12 are missing, what happened to them.

13 THE COURT: Right.

14 MR. WEBER: And they have agreed to identify a
15 couple of limited instances in which documents are possibly
16 missing or in fact missing.

17 THE COURT: All right. So that's resolved?

18 MR. WEBER: Yes.

19 THE COURT: Okay.

20 MR. WEBER: Turning to the document requests, 1, 2
21 and 3, they have agreed to resolve and confirm that there
22 are not any documents being withheld on the grounds of
23 relevance.

24 THE COURT: Just a moment. Okay. So that's
25 resolved?

1 MR. WEBER: Yep.

2 THE COURT: All right.

3 MR. WEBER: Number 6, they have agreed to
4 supplement, see if there's some additional documentation
5 concerning bike transactions and accounting for bike
6 transactions. There were some additional fees charged to
7 some people for bike transactions above what Trek charged
8 Mr. LeMond. He added a fee and they are going to see if
9 there's documentation concerning what happened to that
10 money.

11 THE COURT: So that's resolved?

12 MR. WEBER: That's resolved.

13 THE COURT: All right.

14 MR. WEBER: Number 7. They have agreed to confirm
15 that they are not withholding the documents on the grounds
16 of relevance.

17 THE COURT: Okay. So that's resolved.

18 MR. WEBER: Number 9, the documents regarding a
19 number of witnesses on their Rule 26 list. They have
20 confirmed as to most that they have not withheld any
21 documents on the grounds of relevance. Number 2 as to one
22 individual, Betsy Andreu, they have withheld some documents
23 and they will confirm that none of those documents have any
24 impact on any issues relating to the lawsuit. There's a
25 personal relationship between Mrs. LeMond and Mrs. Andreu.

1 THE COURT: So that's resolved?

2 MR. WEBER: Yes. They are going to see if there's
3 any such documents for Frankie Andreu and confirm one way or
4 another, and the same with David Walsh. In other words,
5 with the exception of Betsy Andreu, they are not aware of
6 withholding any documents. As to Betsy Andreu, they will
7 confirm that they are not withholding any. That some of
8 them are personal, and they will confirm that they are not
9 withholding any non-personal ones that have issues that
10 relate to the lawsuit.

11 THE COURT: Okay.

12 MR. WEBER: Number 11, they have confirmed as to
13 damages that they have produced documents they have related
14 to damages. They are not waiting simply for the expert
15 schedule.

16 THE COURT: Okay.

17 MR. WEBER: Number 13, tax returns for Mr. LeMond
18 are still an issue. They have produced tax returns for the
19 LeMond Cycling, Inc.

20 THE COURT: So as to Mr. LeMond personally, that's
21 not resolved?

22 MR. WEBER: Correct.

23 THE COURT: Otherwise the balance of that document
24 request is resolved?

25 MR. WEBER: Yes.

1 THE COURT: Okay.

2 MR. WEBER: And 15 is resolved. That's the
3 documents concerning lawsuits. There are some additional
4 documents relating to a lawsuit with PTI/Target and they are
5 going to see if they can identify those and produce them.

6 THE COURT: All right. What about document
7 request 14? That was all financial statements for LeMond
8 and all entities identified.

9 MR. WEBER: Same issue as to Mr. LeMond personally
10 versus his businesses.

11 THE COURT: All right.

12 MR. WEBER: That implicates two of the remaining
13 issues, one is non-cycling business interests on the one
14 hand, and personal financial information on the other.

15 THE COURT: All right. And then document request
16 26. That's the individual and joint tax returns for
17 Greg LeMond?

18 MR. WEBER: That's still an issue.

19 THE COURT: So that's not resolved?

20 MR. WEBER: Yes.

21 THE COURT: All right. So it looks like the
22 issues that remain have to do with the issue that Mr. LeMond
23 produce information about non-cycling interests and number
24 two, tax returns?

25 MR. WEBER: Right.

1 THE COURT: Do you want to go ahead then and
2 address those issues?

3 MR. WEBER: Yes. As to tax returns, Mr. LeMond is
4 an individual Defendant. In connection with his handling of
5 bicycles that he was buying from Trek, Trek had extended him
6 the privilege of purchasing bikes at employee discount, a
7 price that is far below what dealers can pay. And
8 Mr. LeMond, in turn, was, we have learned, taking those
9 bikes and as to some of them bartering them for goods and
10 services. People that he owed money to, he would give a
11 bike or bikes in payment of amounts that were otherwise due.
12 For example, a builder. And I believe it may have occurred
13 with respect to some other services like website design. So
14 he was using his bikes as currency.

15 Secondly, he was, as to some people that were
16 getting bikes, he was adding a markup. That he would get
17 the bike at employee price from Trek at X, and he would mark
18 it up in the range of 100 or more dollars and keep that
19 money. As he described it, it was to compensate him for the
20 costs he incurred in ordering the bike for this third person
21 and getting them the bike. So he saw it, if I'm
22 characterizing his testimony correctly, as a recoupment of
23 his costs.

24 And thirdly, he used bikes to generate goodwill
25 for his other business interests. So, for example, his

1 principal current other business is a LeMond Fitness
2 business where they sell bikes to health clubs, recumbent
3 bikes and exercise equipment to health clubs. So there were
4 a number of instances where he was getting bikes at employee
5 pricing and passing them along to the owners of health clubs
6 in an attempt to generate goodwill for his LeMond Fitness
7 business.

8 People -- in one instance the e-mail reads
9 something like so and so is a very wealthy person. He can
10 get whatever he wants and that's why we have to get him this
11 bike. And that, of course, are the exact kind of people the
12 dealers want to sell these LeMond branded bikes to. That
13 dealer has the expense of bricks and mortar employees and
14 with the idea that they are going to sell these bikes to a
15 people in a position to buy them. So that with respect to
16 his individual -- he's an individual Defendant in those
17 areas.

18 In addition, he had personally guaranteed his
19 obligations of LeMond Cycling under the contract since
20 LeMond Cycling is really nothing more than Greg LeMond's
21 corporate vehicle for licensing his name. He was asked to
22 and did personally guarantee the obligations of LeMond
23 Cycling, Inc.

24 Now, how does this impact what we're asking the
25 Court to have them do? First of all, with respect to the

1 personal tax returns, I would like to be able to see whether
2 any of these transactions with the bicycles, for example,
3 show up on the personal tax returns. He is realizing
4 revenue by using the bikes as currency. He is realizing
5 revenue by adding a markup to the bike. And I didn't see
6 any reflection of that in the LeMond Cycling tax returns.
7 If it was there I missed it. And I would like to see if in
8 turn in his personal returns he is acknowledging whatever
9 amounts of money he's making off of these transactions
10 through barter or for cash.

11 THE COURT: And what relevance does that have to
12 this breach of what you've characterized as a breach of
13 contract suit? Let's assume he either is recognizing the
14 revenue or what you find out is it doesn't show up on his
15 personal tax return. How will that lead to the discovery of
16 admissible evidence at trial?

17 MR. WEBER: Well, it would not surprise me to find
18 that the transactions are not reflected in either the
19 personal or corporate tax returns. And I think it will
20 undercut his justification to the jury that these were
21 normal transactions and he was simply recouping business
22 expenses by adding this markup.

23 THE COURT: And, again, what relevance does that
24 have to whether he breached the contract or whether Trek
25 breached the contract?

1 MR. WEBER: That he breached his agreement with
2 Trek by abusing his privilege of purchasing bikes at
3 employee prices. He agreed -- he sold his -- he licensed
4 his name to Trek. He said, Here, Trek. You get to use my
5 name to sell and distribute bikes.

6 What we've learned is he set up his own
7 distribution channel distributing LeMond branded bikes as if
8 he were a dealer and earned revenue, direct and implicit
9 revenue, from his self-designated position as a dealer which
10 was in breach of his agreement with Trek that Trek was the
11 exclusive distributor of his bicycles. He can't
12 simultaneously license his name with exclusivity to Trek for
13 bicycle products and then have a sideline of distribution.

14 THE COURT: I understand if you -- the revenue
15 shows up on his personal return. You've already indicated
16 you've looked at his corporate tax return and you can't find
17 his revenue from these bartering-type transactions or other
18 uses that you've found that supposedly he's been involved in
19 with these bikes. So if the revenue shows up on his
20 personal tax return, I can understand how that would be
21 related to your theory that he was in breach of your
22 contract and the exclusivity provision of the contract. If
23 the revenue doesn't show up, what's the relevance?

24 MR. WEBER: It looks like he's running a side
25 business and putting money in his pocket to benefit himself

1 without regard to the impact on Trek and its dealers. It's
2 not a, as he's now saying, a well-known proper use of his
3 employee pricing agreement. Why is Trek surprised to learn
4 that I have been doing this? Trek shouldn't be surprised,
5 wasn't surprised. It's all above board. If the
6 documentation shows no, it wasn't documented, it was done
7 secretly, there's e-mails that say don't let the Trek
8 employees know we're doing this, I think the jury will draw
9 inferences from that. But, again, I'm at a bit of a
10 disadvantage telling the Court what the admissibility basis
11 is until I see the documents.

12 THE COURT: Okay. So that addresses the --

13 MR. WEBER: Tax returns.

14 THE COURT: -- The tax returns under document
15 requests 13 and 26?

16 MR. WEBER: Right. In addition, the tax returns
17 are discoverable and may be admissible on the grounds of
18 mitigation of damage issues. Trek believed Mr. LeMond's
19 actions ended the agreement for all practical purposes, for
20 legal purposes, when the -- when he served a lawsuit on Trek
21 on the several days after the death of the founder of Trek's
22 memorial service. And if they, on the other hand, establish
23 to the jury's satisfaction that, no, Trek was not correct in
24 ending the agreement, then there is a question of his
25 damages and his mitigation of damages.

1 And given the interplay between his personal
2 ventures and LeMond Cycling, Inc., we would like to explore
3 what he has been doing and what he should have been doing or
4 what he was or wasn't doing in the period after the
5 termination of the Trek agreement in mitigation of his
6 damages or not. So we want to get a picture of Mr. LeMond's
7 business activities and we think we need both his personal
8 and broad form business interests in order to explore this
9 mitigation of damage issue.

10 THE COURT: You terminated or Trek terminated the
11 business relationship and notified him that they were
12 terminating it in 2007?

13 MR. WEBER: No, in November 2007 -- let me
14 describe it this way. Under the agreement, which expired
15 under its terms in 2010, Trek in the fall of 2008 had to
16 give Mr. LeMond two years' heads up we're going to renew or
17 we're not. I assume the evidence will be the notion was it
18 would give Mr. LeMond time to find a new business partner
19 before the expiration of the agreement.

20 A year early in the fall of 2007, Mr. LeMond asked
21 John Burke of Trek, Have you decided what you're going to do
22 in 2010? Can I have early notice which way you're going?
23 And Mr. Burke told Mr. LeMond in November 2007, We are going
24 to continue the contract through 2010 but we will not be
25 extending it beyond that pursuant to a five-year option that

1 Trek had. So they were giving him early notice at
2 Mr. LeMond's request, but saying we will continue with the
3 line through that period.

4 At that time Mr. LeMond did two things. He began
5 preparing a lawsuit that brings us here and he began
6 exploring other business ventures for LeMond branded bikes
7 and other things.

8 Now, as to the second category, he had asked Trek,
9 Okay, is it all right if I go out and look and see if I can
10 find other businesses, and Trek said sure. And in fact
11 Mr. Burke, after the November conversation, followed up in
12 December saying, Greg, have you decided? Do you want us to
13 continue the contract through 2010 or are you going to take
14 your brand back early?

15 And what we see in the e-mails is Mr. LeMond
16 putting in place a strategy to serve this lawsuit on Trek,
17 and I believe the evidence will show he expected Trek not to
18 face the publicity associated with the lawsuit but to pay
19 him millions of dollars as he had demanded in 2004 if Trek
20 was going to end the contract then. I think that's what the
21 jury will conclude. So that's what happened in the fall of
22 '07.

23 THE COURT: All right. As I look at document
24 request number 13, it asks for all tax returns of -- I'm
25 going to focus on Greg LeMond, in response to interrogatory

1 number 1. Interrogatory number 1 asks him to identify all
2 business entities in which he had an ownership interest in
3 since 1985. So putting the two together it appears you're
4 looking for tax returns dating back to -- I don't know if
5 you're seeking it back to 1985?

6 MR. WEBER: Is it '85 or '95, Judge?

7 THE COURT: It says here in your brief since 1985.
8 What interrogatory number 1 asks for, document request
9 number 26 asks for all individual and joint -- individual or
10 joint state and federal tax returns filed by Greg LeMond
11 from 1995 to '97. So, first of all, let's talk about the
12 time. How far back are you seeking these tax returns?

13 MR. WEBER: Tax returns since '95 would be fine,
14 which is the beginning of the relationship with Trek.

15 THE COURT: And why do you need -- on any theories
16 with relevancy, whether it be mitigation of damages, looking
17 to see if he was acting contrary to the terms of the
18 contract in its exclusivity, why do you need tax returns
19 dating back 13 years?

20 MR. WEBER: Just to get a picture, be able to put
21 a picture together for ourselves. And then depending on
22 what we find, for the jury of, this is what -- this is the
23 LeMond, Inc., which is really Greg LeMond. Here is his
24 business empire over these years. It may be, it may well
25 be, that things from '95 to 2000 are of limited relevance.

1 We may not seek their admission. But there are important
2 events that do go back to 1999, two years before the flare
3 up with Armstrong. So there may be material in that time
4 period as well.

5 THE COURT: When does he -- based on the evidence
6 that you have collected to date, when do you find that he is
7 beginning -- the earliest in which he uses his employee
8 discount to get these bikes at basically below market and be
9 able to use them either to barter the bikes for goods and
10 services, use them as currency? How far back does that
11 date?

12 MR. WEBER: They have produced documents going
13 back several years. The contract changed in the year 1999,
14 and I know that there's been an extraordinary amount of
15 activity in the last three years. Before that, sitting here
16 today, I can't tell you off the top of my head.

17 THE COURT: So when you say the contract changed
18 in 1999, is that what -- is that when there was a provision
19 put in place that allowed him to buy bikes at an employee
20 discount?

21 MR. WEBER: He had expanded rights in 1999 or with
22 respect to free bikes. I don't remember standing here today
23 when he began exercising employee-pricing purchasing.
24 Sorry. It's my belief he's been doing that for at least six
25 or seven years; but it's been in the past several years that

1 the numbers have gotten extreme.

2 THE COURT: All right. That addresses the issue
3 of tax returns. What about the financial statements of all
4 of the entities that he owns?

5 MR. WEBER: Right. That relates to this
6 distinction they are drawing between cycling and non-cycling
7 where they do business. And as I described, where you have
8 a celebrity athlete with multiple business interests, what
9 he is selling is really his name, his brand, to these
10 various business partners. That's what draws them to him.
11 That's what he brings to the table, whether that is
12 necessarily cycling related or not.

13 And what we would like to explore with these
14 various business partners he's had over the years, and I
15 think the evidence will show that many of these
16 relationships have ended in acrimony and litigation, and I
17 would -- we would like to explore these other business
18 partners and see, number one, do they have -- did they
19 experience an impact in their business negative as Trek did
20 as a result of Mr. LeMond's attacks on a fellow American
21 athlete. Number two, did Mr. LeMond engage in a pattern of
22 conduct in the business relationships with those other
23 entities that is similar to the pattern with Trek.

24 Now, I appreciate Rule 404, the evidentiary rule,
25 may -- requires me to show that such activity fall within

1 certain evidentiary admissibility standards. But until I
2 have the information, I can't tell the Court whether it fits
3 within one of these 404 exceptions, absence of mistake and
4 so on. But we need to explore these other business
5 relationships for that reason.

6 Thirdly, it may be that we learn from these
7 business partners that Mr. LeMond was saying or doing
8 things, sharing things with them about his business
9 practices with Trek and/or his thoughts about Trek,
10 Mr. Burke, Mr. Armstrong, in a way that likewise could
11 produce admissible evidence.

12 THE COURT: The negative comments that supposedly
13 Mr. LeMond made about Mr. Armstrong started in 2001?

14 MR. WEBER: Yes. In the summer of 2001 as
15 Mr. Armstrong was tying Mr. LeMond's American record,
16 Mr. LeMond for the first time came out and accused
17 Mr. Armstrong as being either the greatest comeback or the
18 greatest fraud. And the reaction of the public was extreme
19 and immediate. That was the time at which Mr. LeMond then
20 asked for permission not to attend the Trek dealer meeting
21 because he knew that the Trek dealers were so angry at him
22 for his comments.

23 THE COURT: You've talked about it, both sides
24 talk about this, that this is really just a contract dispute
25 on both sides, either you performed or you didn't perform.

1 So I'm still trying to understand. Let's assume Mr. LeMond
2 has terrible relationships with all the business
3 arrangements he's been in. Let's assume you're right. What
4 relevance is that going to have to what you've characterized
5 as simply a contract dispute, either there's performance or
6 not, breach or not?

7 MR. WEBER: Yes. It depends on what the
8 relationship of these terrible relationships is. Number
9 one, if it in turn ties to his public disputes with other
10 athletes, it shows -- it makes it more credible when Trek
11 says, Our business was hurt. Our sales were hurt. Our
12 LeMond brand of bicycles sales were hurt because of what he
13 did, if other business partners say, Yeah, we took a hit too
14 when he was doing these things. That's number one.

15 Number two, it depends on what the nature of the
16 terrible relationship was. It may be that we will have the
17 basis for the admissibility of pattern and practice evidence
18 that fits within exception to the Rule 404 that meets one of
19 those exceptions like absence of mistake. It may be that
20 the jury -- that the Court would permit us to put before the
21 jury this evidence to negate arguments of some
22 misunderstanding in the way this is played out.

23 So, again, we appreciate we have to show its
24 ultimate admissibility, but we believe that it is reasonably
25 calculated to lead to the discovery of admissible evidence.

1 THE COURT: With interrogatory number 2,
2 interrogatory number 1 is asking you to identify basically
3 all the business entities that were owned by him since 1985.
4 And then interrogatory number 2 wants him to identify
5 basically anybody that was associated with those businesses
6 that were compensated by him or those businesses.

7 MR. WEBER: Right. The reason as I'm standing
8 here I go to Y85 is because that's when his real -- his
9 cycling businesses, when his -- I should say his
10 professional business really took off as opposed to his
11 simply a cycling career. So that's why we picked '85.

12 THE COURT: And why do you need to know every --
13 identify each person and company who has been compensated by
14 him in connection with his business activities, including
15 but not limited to agents, representatives, independent
16 contractors and employees? Just theoretically what that
17 means is if he employs a cleaning lady, you're asking for
18 him to identify that person.

19 MR. WEBER: I think it's fair that we wouldn't ask
20 for cleaning ladies.

21 THE COURT: But right now the way it's worded it
22 does.

23 MR. WEBER: If they want to object and say they
24 won't provide information about cleaning staff, we're fine
25 with that. What we're looking for is -- first of all, we

1 think it's a fairly discrete group of people. He had a
2 personal assistant by the name of Muffy Haigh for a number
3 of years. More recently his personal matters are being
4 attended to for -- his business/personal matters are being
5 attended to by someone else. So I think it's a fairly short
6 list. We would like to know who they are.

7 Now, we do know that he has had a number of
8 different agents over the years. During his cycling career
9 and thereafter he has had different agents represent him in
10 an effort to sell his name to various companies. We would
11 like to know who all those people are because --

12 THE COURT: Didn't they agree to give you the
13 information with respect to any of his cycling activities so
14 aren't you going to be getting that anyway?

15 MR. WEBER: Well, no, because if I'm an agent for,
16 for example, ING I think is a big company. Or there may be
17 other representatives that represented him in non-cycling
18 areas selling his name to General Mills or Kellogg's or
19 things like that. So, again, I don't think it's a
20 burdensome list. I would just like to know who they are.
21 Who have his employees and agents been over the years.

22 THE COURT: Okay.

23 MR. WEBER: And they haven't said there are
24 hundreds, and I don't think there are. I would just like to
25 know who they are.

1 THE COURT: That addresses interrogatories 1 and
2 2. And then let me just look to see which ones -- I think
3 then the remaining issue --

4 MR. WEBER: Three is another one.

5 THE COURT: Right, 3. Gross earnings of each
6 entity. Tell me why you want -- so you want to know how
7 much he was earning with these non-business entities?

8 MR. WEBER: Right.

9 THE COURT: And you've asked for it since 1999?

10 MR. WEBER: Right.

11 THE COURT: What's the relevance there?

12 MR. WEBER: It gives us a way to know how
13 significant a business venture it was. If it's a thousand
14 dollars of gross earnings for this business entity, we're
15 not going to pursue it. If it's a million dollar business
16 entity, then it's something of significance so we're going
17 to look into it more.

18 THE COURT: What's the relevance? Let's assume
19 he's got a business entity that sells golf clubs. What's
20 the relevance of knowing the gross revenue of that golf club
21 business?

22 MR. WEBER: We're trying to assess its relative
23 importance to him. If it's a million dollars business
24 during the same time period selling LeMond branded golf
25 clubs, it would be of interest to us to go and see have

1 LeMond branded golf clubs experienced a similar hit on sales
2 as did LeMond branded cycles. If it's a thousand dollar
3 entity, we're not going to waste our time.

4 THE COURT: Okay. Again, so the --

5 MR. WEBER: So the relevance, the reason we asked
6 for it, for earnings, was to get an assessment of its
7 relative importance in his overall business ventures as a
8 way to narrow discovery going forward.

9 THE COURT: Okay. And then I think the next item
10 had to do with all financial statements of all of his
11 entities. And they have agreed to provide those for -- they
12 were identified in interrogatory number 1, which goes back
13 to 1985; and he has agreed to provide those that are cycling
14 related but not non-cycling related. So why do you need all
15 of the financial statements for any entities that he has
16 going back to 1985, 23 years?

17 MR. WEBER: Same thing. To get an assessment of
18 their relative importance as a guide toward future
19 discovery.

20 THE COURT: All right.

21 MR. WEBER: And I'm not sure. Perhaps I could ask
22 Ms. Rahne which side of the line LeMond Fitness falls in,
23 cycling or non-cycling?

24 MS. RAHNE: In terms of?

25 MR. WEBER: The subject we've been talking about.

1 MS. RAHNE: We have been open about that.

2 THE REPORTER: I'm sorry?

3 MS. RAHNE: We've been open about that.

4 THE COURT: You're producing information related
5 to LeMond Fitness?

6 MS. RAHNE: To the degree that it's in
7 Mr. LeMond's possession.

8 MR. WEBER: Well, wait, but not in LeMond
9 Fitness's possession?

10 MS. RAHNE: No, I don't represent LeMond Fitness.
11 I'd work with you if you want to take discovery from them.
12 Mr. LeMond is a shareholder, but that's an entirely separate
13 entity. If Mr. LeMond has financial information related to
14 him or his business, we're not withholding that.

15 THE COURT: All right. Have I covered those that
16 are at issue?

17 MR. WEBER: I believe you have.

18 THE COURT: All right. We're going to take a
19 short recess here, actually about ten minutes. I have a
20 conference call that was coming in at 3:30 that I need to
21 take. So I think we'll do it right now and come back and
22 address your responses.

23 MS. RAHNE: Thank you, your Honor.

24 THE COURT: All right.

25 (Recess taken from 3:20 to 3:40 p.m.)

1 THE COURT: All right. We'll hear from
2 Plaintiff's counsel with a response. Actually before you
3 respond, let me just ask one question of Trek's counsel just
4 to clarify. Document request number 18, which is all
5 contracts between LeMond and/or Greg LeMond since 1995, was
6 that resolved or no?

7 MR. WEBER: I think it would be the same cycling,
8 non-cycling distinction. Meaning resolved as to cycling.

9 THE COURT: But not as to -- that's what I
10 thought. All right. Go ahead.

11 MS. RAHNE: Thank you, your Honor. I'm struck, as
12 I was when we started this hearing, by the remarkable
13 contrast between Trek's interpretation of the rules of
14 relevance in terms of what it might be required to produce
15 in response to our requests, which we really feel like we
16 have worked to refine and tailor to our case, and Trek's
17 suddenly very broad interpretation of what it thinks is
18 relevant to its case, which we have similarly sought to find
19 compromise on in order to provide Trek with what it fairly
20 needs in order to prove its case without opening the door to
21 what can only be harassment and disparagement to my client.

22 This is a pattern that began when Trek very
23 publicly filed its lawsuit with a PowerPoint presentation
24 which we've provided to your Honor that included, just by
25 example, statements such as Greg informs Trek that no

1 suppliers are interested. Not true, not a true
2 characterization of the conversation that happened. My
3 client is going to dispute it. But Trek felt very
4 comfortable with a conclusory statement of what happened and
5 what the facts were and what the business relationships were
6 being presented to the media, and then being posted on
7 YouTube. This pattern of practice Mr. Weber wants to talk
8 about has continued into discovery.

9 I see no basis for the things that we're holding
10 our position on. Mr. LeMond and Mrs. LeMond's tax returns
11 have no bearing on this. The bike sale issues which they
12 try to characterize as some distribution network that
13 Mr. LeMond has set up, I need to tell you a little bit about
14 those bike sales. Mr. LeMond had a longstanding right over
15 13 years to purchase bikes at an employee discount through
16 Trek. He did it openly with them. They participated. He
17 never once distributed bikes. He made very open purchases
18 through Trek, Trek sales, that then were sent to people
19 completely with Trek's knowledge.

20 Mr. LeMond also had the right to purchase
21 initially -- not purchase, but to get for free 10 bikes
22 pursuant to their contract, and then it was 15 starting in
23 1999. Although due to a misunderstanding between the
24 parties he wasn't allowed to get 15. He only got 10 until
25 only the last couple years.

1 As my client has frequently said, I'm not sure
2 what they thought Mr. LeMond was going to do with all of
3 these free bikes. He didn't sell them to make money. He
4 gave them away frequently. He didn't make a profit. There
5 are a couple instances which he has testified openly to
6 where he may have given a bike to somebody who then helped
7 him with his cabinets or helped him with his lighting. It's
8 our pretty stalwart position that they were Mr. LeMond's
9 bikes at that point and if he decided to give a free bike to
10 somebody who would then interchange them and help him with
11 something on two instances, it doesn't constitute a breach
12 of the agreement.

13 On the employee bike purchasing similarly. The
14 charges that Trek is now trying to force into some breach of
15 contract, they tended to be things like a \$25 administration
16 fee that Mr. LeMond's assistant charged to cover her time
17 and her effort. It's accounted for on LeMond Cycling's tax
18 returns. It has no bearing on LeMond's tax returns. And if
19 Trek can't find it, it's probably because it's a very small
20 admin cost, maybe a couple of hundred dollars a year, maybe
21 \$500 a year. That isn't significant enough to stand out
22 when the accountant is doing the taxes.

23 The end result, and why I think this has become an
24 issue, is Trek needs something to continue to perpetuate its
25 legal theory that the way it's going to get out of its

1 contract with Greg LeMond and protect itself is to prove
2 that he is a bad businessman and to further disparage him
3 and make their own case through their own rhetoric.

4 We see it in their briefs, your Honor. We see
5 unfounded statements such as Trek is entitled to an
6 identification of all of LeMond's business ventures to
7 demonstrate LeMond's serial failure to abide by his
8 obligations to his business partners. This is the entire
9 pattern and this is what the discovery is tailored to do to
10 somehow show that Mr. LeMond is a bad businessman, although
11 I'm not sure how it's relevant to the contract anyway. I do
12 know it's inflammatory, I do know it's personal, and I do
13 know that this case has a very personal aspect.

14 We are fighting tooth and nail to keep this on the
15 higher road. And we are fighting very hard to keep it to
16 the confines of the contract, to focus in on where we need
17 discovery to prove what's really going on. And there is a
18 back story and it will become known as the case is
19 developed.

20 But the bottom line is this is a breach of
21 contract action. And if Trek has damage related to Greg
22 LeMond being a bad businessperson, they would know it by
23 now. They are not entitled to delve into every single one
24 of his personal other business relationships.
25 Cycling-related businesses we have drawn a line and it is

1 reasonable. It is Mr. LeMond's bread and butter. It is who
2 he is. But the rest of it is just there to further harass
3 and try to further disparage my client.

4 I want to make just one other comment and then if
5 your Honor has any questions. My colleague has a tendency
6 to make rhetorical statements that are painful to my client
7 who is sitting here in the audience, and which I would like
8 to correct but I don't think there's time here. But I do
9 want to just for background provide your Honor with the
10 information on what started all of this.

11 Trek has since 2002 perpetuated the idea that
12 Mr. LeMond at one point called Mr. Armstrong a fraud.

13 THE COURT: Let me ask -- I understand that you
14 would like to be able to let this Court know that your
15 client vehemently disagrees with the characterization that
16 Trek has foisted upon him regarding him personally and
17 business-wise. But what relevance does this have to the
18 Motions to Compel? In other words, I'm concerned about how
19 we use our time.

20 MS. RAHNE: I just have one -- I just want to give
21 one example, if I may.

22 THE COURT: All right.

23 MS. RAHNE: In 2001 Mr. LeMond was interviewed by
24 David Walsh from the Times of London, Sunday Times of
25 London; and Mr. Walsh asked Mr. LeMond regarding

1 Mr. Armstrong, who was at that time a very prominent
2 cyclist. And he said, "Isn't it true that if Lance
3 Armstrong is clean, this is the greatest comeback in the
4 sport?" And Mr. LeMond said, "That is true."

5 And then he said, "And wouldn't it be true that if
6 he isn't clean, it would be the greatest fraud?" And
7 Mr. LeMond said, "Yes, that's true, too."

8 That statement was printed. That statement
9 started all this, and here is how it's relevant, your Honor.
10 LeMond Cycling had an agreement with Trek. They were to
11 promote and support the brand. Trek knows that what in fact
12 Mr. LeMond said is what I just said to you. But because of
13 the complexity of these personalities, Trek chose instead of
14 trying to correct and supporting Mr. LeMond, they instead
15 have participated in the perpetuation that Mr. LeMond is a
16 Lance Armstrong basher. It's simply not true. But it also
17 is why we're seeking discovery into the business
18 relationship between Trek and Mr. Armstrong because we think
19 that has implications on their choices in terms of how to
20 affect, promote, and treat Mr. LeMond's brand. That's how
21 it impacts our Motion to Compel.

22 In terms of how it impacts Trek's Motion to
23 Compel, I just want to make the point that the only thing
24 they are trying to do is to find some sort of causes of
25 action that aren't -- there's nothing tied to the contract.

1 But they are using things that they know not to be true in
2 order to try to create a general sense that he is a bad
3 business person and if we don't get this reigned in now in
4 discovery, it's -- I mean, I don't know where this is going
5 to go. It's -- the personal aspect of this case is just too
6 sensitive to not be reigned in at this point.

7 THE COURT: Okay. Anything further?

8 MS. RAHNE: No, your Honor.

9 THE COURT: All right. Let me just ask -- I was
10 starting to look and then stopped. Is there a protective
11 order in this case yet?

12 MS. RAHNE: There is, your Honor.

13 THE COURT: And I haven't looked for it yet. Are
14 there different levels of protection, meaning is there an
15 attorneys' eyes only level of protection?

16 MS. RAHNE: We have a public designation, a
17 confidential and a highly confidential, I would cite
18 attorneys' eyes only.

19 THE COURT: I just wanted to make sure I
20 understood that.

21 All right. Anything further on Trek's motion?

22 MR. WEBER: No, your Honor.

23 THE COURT: All right. We're going to just take a
24 very short recess again. I do want to give the parties my
25 decision here on both Motions to Compel now so I just want

1 to look through my notes to make sure I've got this down
2 correctly and then I'll come back on the bench and give you
3 my decision at that time.

4 (Recess taken from 3:49 to 3:54 p.m.)

5 THE COURT: All right. First of all, with respect
6 to Plaintiff's motion as it relates to interrogatory number
7 8 and document request number 23, which has to do with the
8 identifying of any agreement between Lance Armstrong and
9 Trek and then the production of any such agreements, I'm
10 going to deny that motion. I don't find that the underlying
11 contracts between Mr. Armstrong and Trek have any relevancy
12 or are likely to lead to the discovery of admissible
13 evidence in this case. Both parties have characterized this
14 basically as a contract dispute; and notwithstanding that,
15 are attempting to get at information that, as I hear your
16 argument, does not appear relevant to me as to whether
17 there's a breach of contract or is there not. And, if so,
18 by whom. And taking a look at the underlying agreement that
19 Mr. Armstrong may have or agreements with Trek, I simply am
20 not convinced that that could lead to the discovery of
21 admissible evidence. And so that motion is denied, that
22 part of the motion.

23 As to Trek's motion against Plaintiffs, I'm going
24 to be granting the motion in part and denying the motion in
25 part as follows:

1 With respect to interrogatory number 1, 2, 3, and
2 document request number 18, I'm denying that motion for the
3 same reason. I simply do not find to the extent that Trek
4 is seeking information or documents about other business
5 entities that Mr. LeMond may have owned, that this has any
6 relevancy to this breach of contract action or could lead to
7 the discovery of admissible evidence at trial. And on that
8 basis I am denying the motion.

9 With respect to document requests number 13 and
10 26, which are seeking tax returns, I am going to grant the
11 motion to this extent and that is that the individual or
12 joint tax returns of Mr. LeMond -- and obviously you have
13 already agreed about the bicycle-related entities -- will be
14 produced dating back to 1999. And they will be produced
15 attorneys' eyes only.

16 As to the tax returns of other entities that are
17 owned by Mr. LeMond, again, I don't see any relevancy to
18 this action or that it could lead to the discovery of
19 admissible evidence. And I don't see any basis to require
20 the tax returns prior to 1999 be produced. There's been no
21 evidence submitted to me or even argument of counsel that
22 suggests that conduct prior to 1999 has any bearing on any
23 of the theories that are being put forth by Trek.

24 I do think finding out what Mr. LeMond has done to
25 the extent at all in terms of declaring income or revenues

1 from these employee-related purchases or free bicycles is
2 fair game. Could lead to the discovery of admissible
3 evidence. Perhaps they are all accounted for on the LeMond
4 Cycling returns. A variety of representations have been
5 made by counsel as to whether they are or aren't. I'm not
6 in a position to determine that, but I do find the
7 individual tax returns of Mr. LeMond or joint tax returns
8 that may lead to the discovery of admissible evidence but
9 only dating back to 1999. Again, those will be produced
10 attorneys' eyes only and not shared outside of counsel or
11 experts. In other words, as laid out in your protective
12 order.

13 With respect to document request number 14, which
14 is all financial statements of any entities owned by
15 Mr. LeMond, I'm denying that motion. Again, I don't find
16 that that information is likely to lead to the discovery of
17 admissible evidence at trial. While I can certainly
18 understand why you would like to find out how big these
19 entities are, I simply don't find that the information about
20 these other business entities, whether they be people or
21 revenues or financial statements, are relevant to this
22 breach of contract action. And so I'm denying the request
23 as to document request number 14.

24 And I think that that, therefore, resolves all of
25 the outstanding issues between the parties.

1 Now, in terms of what you've agreed to or what
2 I've ordered be produced, have you talked among yourselves
3 as to, for example, on what you've agreed to, as to what the
4 timeline will be for production?

5 MR. WEBER: We've had some discussions on timing
6 as to certain documents but I'm confident that we will be
7 able to work that out.

8 THE COURT: All right. What about the ones I'm
9 ordering be produced here, which really are the tax returns.
10 That's the only thing that I'm ordering be produced dating
11 back to 1999. If we set a two-week deadline on that, will
12 that be appropriate?

13 MR. WEBER: That's fine, Judge.

14 MS. RAHNE: I obviously need to confer with my
15 client outside of here but I don't anticipate a problem,
16 your Honor.

17 THE COURT: All right. Well, if there's an issue
18 with that, we'll say that those tax returns will be produced
19 for attorneys' eyes only for review two weeks from today.
20 If there's an issue you can notify me and we'll modify that
21 part of the order.

22 MS. RAHNE: Thank you, your Honor.

23 THE COURT: All right. I will be issuing an order
24 that will be consistent with the outcome here of what I've
25 ruled and what's been resolved by the parties consistent

1 with what I stated from the bench. Anything further on
2 behalf of Plaintiffs?

3 MS. RAHNE: No, your Honor.

4 THE COURT: Anything further on behalf of the
5 Defendant?

6 MR. WEBER: No, your Honor. Thank you very much.

7 THE COURT: All right. That concludes this
8 proceeding.

9 And, again, let me just say, obviously when you
10 get together and you talk in person, a lot happens. And
11 this is the kind of Meet and Confer that you ultimately had
12 here in the court is the kind of Meet and Confer that I
13 would expect the parties to engage in in the future. Letter
14 writing only goes so far. And you will know that if you
15 stick with letter writing, you're going to end up doing the
16 same thing in my courtroom again; which is I will make you
17 sit down and confer with each other and/or I will consider
18 denying your motions because you haven't had a proper Meet
19 and Confer. So I really encourage you to do that in the
20 future.

21 Thank you very much.

22 MR. WEBER: Thanks, Judge.

23 MS. RAHNE: Thank you, your Honor.

24 (Court adjourned at 4:01 p.m.)

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3 I, Carla R. Bebault, certify that the foregoing is
4 a correct transcript from the record of proceedings in the
5 above-entitled matter.
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8 Certified by: s/Carla R. Bebault
9 Carla R. Bebault, RPR, CSR
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